IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRI.REVN.APPLN.NO.28 OF 2007

Smt.Kaushyalya Dashrath Kotkar ..Applicant

Vs.

State of Maharashtra ..Respondents

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Mr.S.R.Chitnis Senior Advocate i/b Mr.S.V.Kotwal for Applicant
Mr.Rajesh More A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : JUNE 18, 2007

P.C.

1. Heard the learned senior advocate for the applicant and learned A.P.P. for the State. Rule. By consent, Rule is made returnable forthwith.

2. The applicant is widow of original accused in a case under the Prevention of Corruption Act. The said case is Special Case No.19 of 2001 and it is pending before the Court of learned Special Judge (Anti-Corruption) Thane. During the investigation in the said case, the husband of the applicant expired. Thereafter, charge sheet came to be filed and charge came to be framed against the applicant under Section 109 r.w. Sections 13(1)(a), 13(1)(d) and 13(1)(e) of

the Prevention of Corruption Act.

3. Mr.Chitnis, the learned senior advocate for the applicant has raised two contentions which are as under:

> . (G) There cannot be any charge under Section 13(1)(b) against the present petitioner as she was not a public servant at any stage.
>
> . (K) The learned Special Judge ought not to have taken cognizance of the offence without the sanction and since the public servant concerned, himself is dead, there cannot be valid sanction and the jurisdiction of the learned Special Court itself is barred."

4. None of these grounds were ever raised or considered by the learned Special Judge before framing charge. In my view one opportunity ought to be given to the applicant to raise the said grounds before the learned Special Judge. To enable the

applicant to do so, the charges framed against the applicant by order dated 8.8.2003 as well as the order dated 25.4.2006 passed by the learned Special Judge, Thane are set aside. The learned Special Judge shall hear the necessary parties and thereafter proceed with the case, in accordance with law.

5. Rule made absolute accordingly.

[SMT.V.K.TAHILRAMANI, J.]